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Supreme Court, U.S.
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No. 10 1146

In the

Supreme Court of the United States

Steven C. Denk,

Petitioner

v.

Douglas H. Shulman, Karen L. Williams,
Bharati Patel, Maureen Green,
Ron Braver, Jeff Stotko, Alvin Patton,
Kevin Harris, K. Spicer,

Respondents

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court's long-settled decisions regarding the delimitations of Congress's plenary income taxation authority as set forth in the Constitution at Article I, Section 8, clause 1, and Section 2, clause 3, and Section 9, clause 4, and the 16th Amendment remain the paramount law, namely, the law of the land, and with particularity as follows:

   a. The 16th Amendment conferred no new taxation powers to Congress not originally granted.

   b. Federal income taxes are indirect taxes, not direct taxes.

   c. Federal income taxes are in the nature of excise taxes, wherein excises may be *laid upon the manufacture, sale or consumption of commodities within a country, upon licenses to pursue certain occupations, and upon corporate privileges.*

   d. Federal income taxes are specifically excises laid on the privilege of doing business as a corporation for gain or profit.

   e. "Income" within the Constitutional meaning of the federal income taxation scheme is simply a term signifying the means for measuring gains and profits in consequence of doing business as a corporation.

2. Whether burden of proving petitioner was their alleged taxpayer pursuant to the aforesaid long-settled Constitutional law rested squarely on respondents, and no differently on the lower district and appellate court, to produce a verified answer to

petitioner's verified subject-matter jurisdiction challenge when said challenge averred only the verifiably relevant aforesaid Constitutional law, whereby so lawfully answering, said federal actors also either proved a verifiably relevant nexus existed connecting petitioner's income earned during alleged tax years to the above-said, long-settled Constitutional law, or in consequence of failure to so prove, then admitting petitioner was not a person subject to Congress's aforesaid delimited income taxation authority for the alleged tax periods, and therefore, not their alleged taxpayer.

3. Whether federal actors, to include, but not limited to respondents and the below district court and appellate court in petitioner's case, have discretionary authority to avoid or evade by any manner or means whatever answering petitioner's subject-matter jurisdiction challenge when said challenge at all times set forth by verified statements averred only the verifiably relevant constitutional law, still lawfully undisputed as long-settled as above stated, to include their avoiding and evading a verified production of one or more nexuses connecting petitioner's income earned during alleged tax periods to the long-settled delimitations of Congress's income taxation authority above stated.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., *infra.* 1a) is unreported. The opinion of the district court (App., *infra,* 9a) granting respondents' motion for dismissal is unreported.

JURISDICTION

The court of appeal's judgment was entered on December 21, 2010. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of the Constitution granting plenary taxation authority to the U.S. Congress provide in relevant parts: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers ***." U.S. CONST. Art. I, sect. 2, cl. 3, and "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." U.S. CONST. Art. I, sect. 8, cl. 1, and "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." U.S. CONST. Art. I, sect. 9, cl. 4, and "The Congress

shall have power to lay and collect Taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." U.S. CONST. 16th Amend., also known as the Income Tax Amendment.

No federal income taxation-related statutes, or other derivative law evidencing Congress's income taxation authority are involved in the instant case directly in consequence of failure of respondents to establish the jurisdictional prerequisite facts as lawful grounds for their taxpayer allegations in petitioner's case, namely, their failure to produce one or more nexuses connecting petitioner's income during the alleged tax periods to the long-settled Constitutional law delimitating Congress's income taxation authority; hence, respondents' failure to verifiably prove petitioner was a person subject to Congress's enacted statutes during the alleged tax periods.

Title 28 U.S.C. §1746, declaration under penalty of perjury, is involved as throughout these proceedings, *ab initio,* petitioner submitted all his written communications, filings of process and the like in his case as his verified statements of truth subject to the penalties of perjury for false statements. In this regard respondents have proceeded at all times by unverified statements which from the face of the long-settled Constitutional law and related material facts of the case can only be frivolous nonsense.

Title 28 U.S.C. §2679 providing for certificate under the Westfall Act which was filed by a U.S.

Justice Department attorney in the name of the United States. And wherein, said attorney perjured himself by setting forth self-evidently criminal misrepresentations of the Constitutional law and facts of petitioner's case. And whereupon, the lower district court then substituted United States as defendant with full knowledge said attorney's certificate was an expression of criminal fraud serving as simulated legal process. Notwithstanding federal actors thereafter proceeding as if the United States were the proper defendant/respondent pursuant to their many fallacy constructions from the whole cloth of criminal misrepresentation and fraud, nevertheless petitioner is lawfully compelled to continue naming the above persons as respondents for failure thus far of federal actors to verifiably establish respondents proceed in his case other than in their private capacities having failed to lawfully prove their authority to proceed in their official capacities.

STATEMENT

This case raises important recurring questions all of which relate to the express Constitutionally enumerated *(supra)* delimitations of Congress's plenary income taxation authority long settled by this Court *(infra)* and which Constitutional points of law are repeatedly averred by petitioner in his at all times verified, and still lawfully unanswered, subject-matter jurisdiction challenge on the one hand, while on the other, there is the indispensable matter of the intrinsic lawlessness of respondents' repeated acts of avoidance and evasion using all manner of unverified fallacy constructs self-evidently intended as their nonsensically frivolous answers to

petitioner's verifiably relevant subject-matter jurisdiction challenge. Among these important recurring questions are the following:

Do respondents have official authority to make federal income taxpayer allegations against petitioner, or any individual, when no nexus exists firstly connecting the alleged taxpayer to the long-settled Constitutional law delimiting Congress's plenary income taxation authority?

Does burden of proof rest on petitioner, or any other individual, to prove he/she is not the alleged taxpayer when firstly respondents fail to prove existence of one or more nexuses for the alleged tax periods connecting him/her to Congress's long-settled income taxation authority once they are lawfully challenged as described herein on the Constitutional issues set forth in petitioner's case?

Do respondents have authority to proceed against petitioner, or any other person, absent proving jurisdictional prerequisite facts essential to lawfully establishing he/she was a person subject to Congress's aforesaid delimited income taxation authority and does this authority include an official authority to avoid and evade lawfully answering petitioner's, or any other person's, challenge using all manner of fallacy constructs, namely, by answering verified challenges such as petitioner's with unverified nonsensically frivolous arguments?

Is it criminal fraud for respondents to allege petitioner, or any other person, is subject to Congress's enacted income taxation laws or any part of

the related derivative expressions of said law and then to have those allegations upheld in the below district court and subsequently by the appellate court, if no income-related nexus provably exists connecting petitioner's income during tax periods alleged to the paramount law of the land, namely, the long-settled, Constitutionally imposed, delimitations of Congress's said taxation authority in the first place?

Do respondents have lawful authority to cite provisions of Title 26 of the United States Code, Title 26 of the Code of Federal Regulations, the Internal Revenue Code, ostensibly taxpayer-related case law, or any other derivative expressions of Congress's enacted income taxation law as lawful grounds for their official authority to proceed against petitioner, or any other person, when they have failed wholly and altogether to produce a verifiable nexus connecting petitioner to Congress's aforesaid delimited income taxation authority in the first place?

Has this Court reversed itself on one or more of its long-settled Constitutional law points regarding Congress's plenary income taxation delimitations? Petitioner finds nothing in U.S. Supreme Court reporters that such is the case.

A. The Paramount Law of Federal Income Taxation Authority

This Court has long-settled each of the Constitutional law points set forth in the Constitution at Article I, Section 8, clause 1, and Section 2, clause 3, and Section 9, clause 4, and the 16th Amendment *(infra)* regarding Congress's income

taxation authority. In consequence, this Court has settled the delimitations of Congress's income taxation authority. With particularity these points of law are as follows:

a. Issue of the 16th Amendment

The 16th Amendment conferred no new taxation powers to Congress not originally granted, and whereas this honorable Court settled this point of Constitutional law in *Brushaber* v. *Union Pacific R.R. Co.*, 240 U.S. 1 at 17 through 19 (1916), and whereas, this point was quickly reaffirmed in *Stanton v. Baltic Mining Co.*, 240 U.S. 103, at 112 (1916). In part, this Court stated:

> "This is the text of the 16th Amendment:
>
> "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."
>
> It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense – an authority already possessed and never questioned – or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. Indeed in the light of history which we have given and of the decision in the *Pollock Case* and the ground upon which the ruling in that case

was based, there is no escape from the conclusion that the Amendment was drawn for the purpose of doing away for the future with the principle upon which the *Pollock Case* was decided, that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived, since in express terms the Amendment provides that income taxes, from whatever source the income may be derived, shall not be subject to the regulation of apportionment. From this in substance it indisputably arises, first, that all the contentions which we have previously noticed concerning the assumed limitations to be implied from the language of the Amendment as to the nature and character of the income taxes which it authorizes find no support in the text and are in irreconcilable conflict with the very purpose which the Amendment was adopted to accomplish. Second, that the contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, is also wholly without foundation since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income

may be derived, forbids the application to such taxes of the rule applied in the *Pollock Case* by which alone such taxes were removed from the great class of excises, duties and imposts subject to the rule of uniformity and were placed under the other or direct class. This must be unless it can be said that although the Constitution as a result of the Amendment in express terms excludes the criterion of source of income, that criterion yet remains for the purpose of destroying the classifications of the Constitution by taking an excise out of the class to which it belongs and transferring it to a class in which it cannot be placed consistently with the requirements of the Constitution. Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the *Hylton Case* because of statements made in the opinions in that case it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiating or challenging the ruling in the *Pollock Case* that the word direct had a broader significance since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such

> wider significance a part of the Constitution — a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended, that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the source itself and thereby to take an income tax out of the class of excises, duties and imposts and place it in the class of direct taxes." *Brushaber* v. *Union Pacific R.R. Co.*, 240 U.S. 1 at 17 thru 19 (1916).

In the same term, this Court reaffirmed *Brushaber (supra)* stating in part:

> "[B]y the previous ruling [referring to *Brushaber v. Union Pacific R. R. Co.*, 240 U.S. 1 (1916)] it was settled that the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning [of our national government pursuant to the U.S. Constitution] from being taken out of the category of indirect taxation to which it inherently belonged...." *Stanton v. Baltic Mining Co.*, 240 U.S. 103, at 112 (1916).

b. Issue of Indirect Versus Direct Taxes.

Federal income taxes are indirect taxes, not direct taxes, also settled in *Brushaber, (supra)* and

reaffirmed in *Stanton, (supra).*

c. Issue of Three Subclasses of Indirect Taxes and Excises are Taxes Upon Corporate Privileges.

Before 16th Amendment ratification, this Court had already settled there are only three subclasses of indirect taxes, *"duties, imposts, and excises."* (CONST. art. I, sect. 8, cl. l) and also settling that of the three indirect tax subclasses, taxes upon corporate privileges are in the *excise* subclass:

> "Excises are '*taxes laid upon the manufacture, sale or consumption of commodities within a country, upon licenses to pursue certain occupations, and upon corporate privileges.*' Cooley, Const. Lim., 7th ed. 680." *Flint v. Stone Tracey Co.*, 220 U.S. 107 at 151 (1911).[1]

d. Issue of Federal Income Taxes are Excise Taxes

Regarding the issue of federal income taxes on corporate privileges, therefore, being in the excise subclass this Court stating not for the first or for the last time:

> "The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, i.e. with the advantages which arise from corporate or quasi-corporate organization; or,

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[1] Flint related to tax years under provisions of the Corporate Excise Tax Act of 1909.

> when applied to insurance companies, for doing the business of such companies. As was said in the *Thomas Case*, 192 U.S. 363 *supra*, the requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute, no tax is payable." *Flint v. Stone Tracey Co.*, 220 U.S. 107 at 151-152 (1911).

e. Issue of Federal Income Taxes Are Excise Taxes on the Privilege of Doing Business as a Corporation for Gain or Profit.

Regarding the issue of federal income taxes being excises specifically on corporate privileges and the fact that the 16th Amendment did not disturb the settled law regarding income taxes being an excise tax on the privilege of doing business as a corporation for gain or profit by adding any new powers of income taxation not conferred to Congress originally (See *Brushaber, supra, Stanton, supra, Doyle, infra, Merchants Loan & Trust Co., infra)*, this Court declared itself yet again in *Whitridge:*

> "As repeatedly pointed out by this court, the corporation tax law of 1909 — enacted as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment imposed an excise or privilege tax, and not in any sense a tax upon property or upon income merely as income. It

was enacted in view of the decision of this court in *Pollock v. Farmer's Loan & T. Co.* 157 U.S. 429 [cite omitted] which held the income tax provisions of a previous law (act of August 27, 1984, 28 Stat. at L. Chap. 349, pp. 509, 553, §§ 27 etc U.S. Comp Stat. 1901, p. 2260) to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument. As was said in *Flint v. Stone Tracey Co.* 220 U.S. 107, 145, 55 L. ed. 389, 411, 31 Sup. Ct. Rep. 342. Ann. Cas. 1912 B, 1312, respecting the act of August 5, 1909: 'The tax is imposed not upon the franchises of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to 1 per centum upon the entire net income over and above $5000.00 received from all sources during the year: that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint-stock organizations of the character described. As the latter organizations share many benefits of doing business in a corporate capacity.' This interpretation was adhered to and made the basis of decision in *Zonne v. Minneapolis Syndicate*, 220 U.S. 187 [rest of cite omitted].

"A reference to the language of the act is sufficient to show that it does not in terms impose a tax upon corporate property or

franchises as such, nor upon the income arising from the conduct of business unless it be carried on by the corporation. Nor does it in terms impose any duty upon the receivers of corporations or of corporate property, with respect to paying taxes upon the income arising from their management of the corporate assets, or with respect to making any return of such income.

"And we are unable to perceive that such receivers are within the spirit and purpose of the act, any more than they are within its letter. True, they may hold, for the time, all the franchises and property of the corporation, excepting its primary franchise of corporate existence. In the present cases, the receivers were authorized and required to manage and operate the railroads, and to discharge the public obligations, of the corporations in this behalf. But they did this as officers of the court, not as officers of the respective corporations, nor with the advantages that inhere in corporate organization as such. The possession and control of the receivers constituted, on the contrary, an ouster of corporate management and control, with the accompanying advantages and privileges.

"Without amplifying the discussion, we content ourselves with saying that, having regard for the genesis of the legislation, the constitutional limitation in view of which it was evidently framed, the language employed by the lawmaker, and the reason and spirit of

> the enactment, all considerations alike lead to the conclusion that the act of 1909 did not impose a tax upon the income derived from the management of corporate property by receivers, under such conditions as are here presented." *United States v. Whitridge,* 231 U.S. 144 (1913). [2]

f. Issue of Constitutional Meaning of Word "Income" Within the Federal Income Taxation Scheme

Within the federal income taxation scheme the word "income" is simply a term signifying the means for measuring gains and profits in consequence of doing business as a corporation. On this point when describing the intent of Congress in the Corporation Excise Tax Act of 1909, this Court stated:

> "[T]he legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from the business operations and property *** Whatever difficulty there may be about a precise and scientific definition of 'income' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax;

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[2] *Whitridge*, as did *Zonne*, related to tax years 1909 and 1910 under provisions of the Corporate Excise Tax Act of 1909 and wherein *Whitridge* addressed matter of officers of bankruptcy court managing certain incorporated street railways while in receivership.

> conveying rather the idea of a gain or increase arising from corporate activities." *Doyle v. Mitchell Brothers Co.*, 247 U.S. 179 (1918).[3]

To settle continuing and all further arguments regarding the meaning of "income" in federal income taxation statutes whether enacted before or in any subsequent tax year following 16th Amendment ratification, this Court stated:

> "[T]he word "income" has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909,***. The word [income] must be given the same meaning in all of the Income tax Acts of Congress that was given it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by the decisions of this Court. In determining the definition of the word "income" thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved in the definitions quoted, which it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the 16th Amendment to the Constitution. Doyle v. Mitchell Brothers Co., 247 U.S. 179 at 185, 38 S. Ct. 467 [1918]; Eisner v. Macomber. 252 U.S. 189, 206, 207, 40 S.Ct. 189, 9 A.L.R. 1570." *Merchants Loan and Trust Co., v. Smietanka,* 255 U.S. 509 (1921).

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[3] Doyle related to tax years under provisions of the Corporation Excise Tax Act of 1909.

B. The Internal Revenue Service (IRS) Proceedings

From the beginning of IRS proceedings in his case, petitioner timely communicated with respondents. At all times petitioner conducted himself on grounds that the U.S. Constitution was the paramount law of the land and consequently the source of Congress's income taxation authority. And further to the point, therefore, knowing it is everyone's duty to know the law and that ignorance of the law is no excuse, petitioner informed himself regarding the delimitations of Congress's income taxation authority as long settled by this Court.

Knowing that none of his income for the tax periods alleged by respondents was income within the long-settled meaning of the word "income" to include that none of his income originated as a measure of gain or profits in consequence of doing business as a corporation, petitioner requested that respondents produce verifiable evidence that his income was connected to the long-settled delimitations of Congress's income taxation authority. This request became part of an on going exchange of communications with respondents and became his subject-matter jurisdiction challenge. Included in this challenge were presentments of the long-settled Constitutional law no differently than set forth in this petition (*supra*) having the form of briefs and memos of law, as well as sets of interrogatories and the like.

Respondents, on the other hand, proceeded at all times by avoiding and evading answering to the Constitutional law and related material facts raised by

petitioner in his challenge. Respondents proceeded in accordance with their own IRS policies and practices self evidently upon grounds the Constitutional law issues raised by petitioner were frivolous and that petitioner was the taxpayer as they alleged.

Upon petitioner exhausting their IRS procedural offerings as such are recognized by respondents and without at any time having lawfully answered his at all times verified, and therefore still lawfully unanswered challenge, petitioner was notified of IRS intent to lien or levy his property and rights in property. Petitioner did not elect to proceed next to the U.S. Tax Court knowing this forum is for taxpayers only. Wishing only to get a lawful answer to his still lawfully undisputed and indispensable, because verifiably relevant, subject-matter jurisdiction challenge he next filed his challenge in district court invoking the court's jurisdiction under 28 U.S.C. §1331 - his only purpose to have his challenge lawfully answered.

C. The District Court Decision

The complaint filed in the district court was simply a continuation of petitioner's still lawfully unanswered challenge averring only the long-settled Constitutional law delimiting Congress's income taxation authority to include demanding that respondents produce one or more income-related nexuses that respondents had reason to know connected petitioner's income to Congress's said delimited income taxation authority.

Here again attorneys for respondents continued by evasion and avoidance of the Constitutional issues notwithstanding they were plainly set forth in the district court no differently than they are in this petition.

Also here attorneys for respondents filed a certificate under the Westfall Act, 28 U.S.C. §2679, whereupon the district court substituted the United States as defendant, notwithstanding the averments of said certificate upon their face were criminally false misrepresentations of the Constitutional law and related material facts of petitioner's case hence constituted perjured statements by the certifying attorney and could not possibly have gone unrecognized as such by the district court judge.

Following the self-evidently, absurdly nonsensical, hence frivolous and irrelevant, arguments by respondents' attorneys wherein at all times they criminally misrepresented the Constitutional law and related material facts of petitioner's case, the district court granted a motion to dismiss in the name of "The Government" and dismissed petitioner's challenge.

Petitioner then timely gave notice of intent to appeal to the appellate court.

D. The Appellate Court Decision

Petitioner's appeal to the appellate court once again was simply a continuation of petitioner's still lawfully unanswered challenge averring only the long-settled Constitutional law delimiting Congress's income taxation authority to include demanding that

respondents produce one or more income-related nexuses that respondents had reason to know connected petitioner's income to Congress's said delimited income taxation authority.

Here again no differently than in district court attorneys for respondents continued by evasion and avoidance of the Constitutional law issues not withstanding they were plainly set forth in the appellate court no differently than they are in this petition.

Following the self-evidently, absurdly nonsensical, hence frivolous and irrelevant, arguments by respondents' attorneys wherein at all times they criminally misrepresented the Constitutional law and related material facts of petitioner's case, the appellate court in its order (App. 1a) and final judgment (App. 4a) ruled petitioner's appeal was frivolous and further gave petitioner 14 days to show cause why the appellate court should not impose a sanction of $4,000.00, described as the normal fine for frivolous tax-protest appeals.

Petitioner did timely file his "Answer to Court's Order to Show Cause and Demand for Lawful Answer" to which he received no lawful answer.

E. Duty of Judges to Answer Verifiably Relevant Subject-Matter Jurisdiction Challenges

Petitioner's challenge remains lawfully unanswered in terms of the long-settled Constitutional law, hence petitioner's challenge

must be deemed still lawfully on-going as a matter of American jurisprudence fundamentals for failure of respondents at any time to lawfully answer said challenge, either during IRS proceedings, or during subsequent lower district court proceedings, here to include the district court's failure to answer *sua sponte,* or then in further subsequent appellate court proceedings, here to include the appellate court's failure to answer *sua sponte.*

Petitioner is left to conclude from proceedings thus far that in this peculiar class of cases federal judges have neither duty nor obligation to see that verifiably relevant subject-matter jurisdictional challenges are lawfully answered when such are placed squarely before them. Instead by all appearances, federal judges in this peculiar class of cases seem to have a higher duty and obligation to what might best be characterized as some manner of corporate-oriented fiction known to them to have *de facto* sovereignty for purposes of federal rulership and styled variously to include *U.S. Government.* And in such instances perhaps they may be said to have license to criminally misrepresent the Constitutional law and related-material facts no differently than respondents have done at all times incident to these proceedings and for the same reasons, namely, because it is their *de facto* duty.

As evidence of the aforesaid take notice of the district court statement and decision (App. 8a-9a) wherein Judge Norgle granted respondents' motion to dismiss arguing as grounds for the dismissal points that could be relevant and lawful for purposes of the district court decision only if

petitioner were first verifiably proven the alleged taxpayer. But, this taxpayer conclusion remained unproven as a matter of the long-settled Constitutional law delimiting Congress's income taxation authority, to include the failure of respondents, or in the alternative Judge Norgle acting *sua sponte*, to produce a verifiable nexus connecting petitioner's income for the alleged tax periods to said law. Consequently, said decision could only be irrelevant, frivolous nonsense, as argued by Judge Norgle. Further to the point, it could only be a criminal misrepresentation of the Constitutional law and related material facts of petitioner's case, inasmuch as, respondents, or in the only alternative the district court acting *sua sponte*, had failed to first verifiably prove the Constitutional law facts delimiting Congress's income taxation authority were other than as set forth in petitioner's challenge, to include they had failed to verifiably prove one or more nexuses connecting petitioner to Congress's constitutionally delimited income taxation authority.

Likewise the appellate court's final judgment and order dated December 21, 2010 (App. 1a-4a), and order dated January 13, 2011 (App. 13a) set forth as grounds for dismissal points that could be relevant and lawful for purposes of the appellate court decision only if petitioner were first proven to be the taxpayer subject to Congress's delimited income taxation authority and wherein to include producing one or more verifiable nexuses connecting petitioner to said Constitutional law as aforesaid. But no differently than as occurred in the district court, this taxpayer conclusion

remained unproven as a matter of the long-settled Constitutional law delimiting Congress's income taxation authority, to include it remained unproven for failure of respondents, or in the alternative the appellate court acting *sua sponte*, to verifiably prove one or more nexuses connecting petitioner's income for the alleged tax periods to the settled Constitutional law as aforesaid. Consequently, no differently than as occurred in the district court, the arguments set forth in the appellate court decision could only be irrelevant, frivolous nonsense. Further consequently, the appellate court judges know, or should know, their decision constituted criminal simulation of legal process no differently than did the district court's decision and order.

From the face of the record, the district and appellate court decisions and orders all run in the veins of criminally fraudulent fallacy constructs no differently than the following text found in the appellate court order (App. 13a-14a), to wit: *"The complaint* [petitioner's challenge] *makes several tax-protest arguments, such as that Congress is powerless to tax incomes of natural persons and that the defendants have violated the Constitution by refusing to concede that their collection efforts are unlawful."* What stupid expressions these would be had they been actually uttered by petitioner! And what pathetically outrageous criminal misrepresentations of petitioner's challenge they are having been uttered by sitting appellate court judges! But then, this is the kind of nonsensically frivolous, criminally fraudulent, bosh that has permeated the entirety of respondents',

and their attorneys', and the judges' unverified arguments from the outset of proceedings against petitioner in this instant case.

REASONS FOR GRANTING THE PETITION

Upon its face, petitioner's case, continued by this petition, presents to respondents and all other federal actors who have become parties to it a lawful demand that is neither more nor less than a verifiably relevant subject-matter jurisdiction challenge, inasmuch as, it is grounded in its entirety on the long-settled Constitutional law and related-material facts peculiar to this class of cases.

If the Constitution is still the law of the land, and if the Constitutional points of law (*infra*) pertaining to the delimitations of Congress's income taxation authority are still the holding law, and if all federal officials, to include the federal courts, are still bound to uphold this settled law, and if no income-related nexuses exist connecting petitioner's income to the tax periods alleged by respondents, then by all appearances petitioner was indeed not a person subject to said taxation authority for the alleged tax periods.

It should go without saying that the issues presented in this case are recurring and of great practical importance, and therefore, this petition merits a hearing because of its far reaching legal and practical effects. Notwithstanding the aforesaid, petitioner readily concedes that at this late date in the American narrative of nationhood only Constitutional charades are likely to be entertained by federal

officials when by all appearances as is self-evident from the face of the instant record they are committed to a higher corporatist ideal of sovereignty than any ever envisioned by the people when the Constitution was ratified - fiction or no.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Steven C. Denk
Proceeding pro se
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(847) 299-0236
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APPENDIX

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 30, 2010*
Decided December 21, 2010

Before

FRANK H. EASTERBROOK, *Chief Judge*
RICHARD A. POSNER, *Circuit Judge*
DIANE P. WOOD, *Circuit Judge*

No. 10-2563

STEVEN C. DENK,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois
Eastern Division.

No. 09 C 5891
Charles R. Norgle, *Judge.*

Order

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. See Fed. R. App. P. 34(a); Cir.R. 34(f).

The Internal Revenue Service notified Steven Denk that he owes $1.2 million in taxes. The notice told Denk that he could contest this assessment in the Tax Court, or that he could pay and sue for a refund in a United States District Court. Denk did not take either option. Without paying, he filed this suit in district court—not against the United States (the right defendant in a suit seeking a refund), but against the Commissioner of Internal Revenue and eight of the Commissioner's subordinates. The complaint makes several tax-protest arguments, such as that Congress is powerless to tax incomes of natural persons and that the defendants have violated the Constitution by refusing to concede that their collection efforts are unlawful. Denk asked the judge to enjoin the defendants from trying to enforce the Internal Revenue Code against him.

The United States filed a certificate under the Westfall Act, 28 U.S.C. §2679(b)(2), (d), and the district court substituted the United States as the defendant, which explains the caption on this order. The substitution requires the litigation to proceed under the Federal Tort Claims Act, which, because it does not cover any claim related to the "assessment or collection of any tax," 28 U.S.C. §2680(c), does not offer Denk any prospect of success. He would prefer to retain the individual defendants, but they are not proper parties. Denk wants to proceed under the implied remedy recognized in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), but we held in *Cameron v. IRS*, 773 F.2d 126 (7th Cir. 1985), that *Bivens* does not displace the elaborate statutory system for litigating claims related to taxation. Accord, *Adams v. Johnson*, 355 F.3d 1179 (9th Cir. 2004); *Judicial Watch, Inc. v. Rossotti*, 317

F.3d 401 (4th Cir. 2003); *Shreiber v. Mastrogiovanni*, 214 F.3d 148 (3d Cir. 2000); *Dahn v. United States*, 127 F.3d 1249 (10th Cir. 1997); *Vennes v. Unidentified Agents*, 26 F.3d 1448 (8th Cir. 1994); *McMillen v. Department of the Treasury*, 960 F.2d 187 (1st Cir. 1991). These decisions implement the Supreme Court's directive that courts not use *Bivens* to circumvent limitations integral to statutory systems for contesting particular kinds of administrative action. See, e.g., *Hui v. Castaneda*, 130 S. Ct. 1845 (2010); *Wilkie v. Robbins*, 551 U.S. 537 (2007).

The Internal Revenue Service told Denk where, and how, to contest the agency's view of Denk's tax obligations. By choosing to disregard that advice, Denk ensured that his suit had no chance of success. A federal district court lacks jurisdiction to review unpaid tax assessments; to obtain review in a district court, Denk had to pay and sue for a refund. 28 U.S.C. §1346(a)(1); *Flora v. United States*, 362 U.S. 145, 177 (1960). What is more, the Tax Injunction Act, 26 U.S.C. §7421(a), bars the sort of prospective relief that Denk seeks.

Denk's appeal is frivolous. We give Denk 14 days to show cause why we should not impose a sanction of $4,000, the normal fine for frivolous tax-protest appeals. See *Szopa v. United States*, 460 F.3d 884, 887 (7th Cir. 2006). The judgment is affirmed, and an order to show cause is issued.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FINAL JUDGMENT

December 21, 2010

BEFORE: FRANK H. EASTERBROOK, Chief Judge
RICHARD A. POSNER, Circuit Judge
DIANE P. WOOD, Circuit Judge

No.: 10-2563

STEVEN C. DENK,
Plaintiff - Appellant
v.
UNITED STATES OF AMERICA
Defendant - Appellee

Originating Case Information:
District Court No: 1:09-cv-05891
Northern District of Illinois, Eastern Division
District Judge Charles R. Norgle

The appellant's appeal is frivolous. We give Denk 14 days to show cause why we should not impose a sanction of $4,000, the normal fine for frivolous tax-protest appeals. See *Szopa v. United States*, 460 F.3d 884, 87 (7 Cir. 2006). The judgment is AFFIRMED, and an order to show cause is issued, with costs, in accordance with the decision of this court entered on this date.

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge
Charles R. Norgle

CASE NUMBER 09 C 5891

DATE 6-4-2010

CASE TITLE
Steven C. Denk vs. Douglas H. Shulman, et al.

DOCKET ENTRY TEXT
Motion by Plaintiff to alter or amend judgment [42] is denied.

s/ Charles Norgle

STATEMENT

Denk, a pro se, initiated this case on September 22, 2009 against the United States and several IRS employees, alleging claims pursuant to the Fifth and Sixth Amendments and seeking various injunctive and declaratory relief. The government eventually moved to dismiss the complaint, and on April 27, 2010 the Court granted the government's motion.

In its Order the Court found that Denk could not maintain a claim pursuant to the Sixth Amendment because neither the IRS nor any other governmental actor commenced adversary proceedings against him. The Court also found that any claim based on the Fifth Amendment failed because Denk did not have a

clearly-established constitutional right to the discovery he sought from the IRS investigators. Moreover, the Court dismissed any claims based on state law or on federal statutes that did not allow a private right of action against the United States because those claims were governed by the FTCA and there was nothing in Denk's complaint to plausibly suggest that he exhausted his administrative remedies before filing those claims in this Court. Finally the Court dismissed any claims that sought declaratory and injunctive relief because the Anti-Injunction Act and the Declaratory Judgment Act barred this Court from exercising jurisdiction over claims in which litigants challenged their tax assessment. Accordingly, the Court dismissed Denk's complaint in its entirety, with prejudice.

On May 24, 2010 Denk filed a motion to alter or amend the Court's dismissal of his claims. He brought the motion pursuant to FED. R. Civ. P. 59(e), to which the following standards apply. A Rule 59(e) motion serves the limited function of correcting manifest errors of law or fact, or of presenting newly discovered evidence or, perhaps, an intervening change in law. Cosgove v. Bartollotta, 150 F,3d 729, 732 (7th Cir. 1998). These motions, however, cannot be used to introduce new legal theories for the first time, to raise legal arguments that could have been heard during the pendency of the previous motion, or to present evidence that could have been adduced during the pendency of the original motion. Publishers Res., Inc. v. Walker-Davis Publ'ns, Inc., 782 F.2d 557, 561 (7th Cir. 1985). The decision to grant or deny a Rule 59(e) motion is entrusted to a district court's discretion. See Andrews v. E.I.

DuPont De Nemours & Co., 447 F.3d 510, 515 (7th Cir. 200).

In support of his motion, Denk relies exclusively on arguments that he either raised or could have raised in his response to the government's motion to dismiss. In doing so, he characterizes the Court's statements in its prior Order as "outrageous" or "egregious," without illustrating any manifest errors of law, without presenting newly discovered evidence and without noting an intervening change in the law. In short, Denk's motion is entirely unavailing. A motion to reconsider is not the proper forum for a party to re-raise arguments that the Court considered or could have considered previously. Absent a manifest error of law, or another proper reason for this Court to reconsider its prior Order, the Court remains unmoved by Denk's duplicative arguments. Accordingly, Denk's motion pursuant to Rule 59(e) is denied.

IT IS SO ORDERED.

United States District Court
Northern District of Illinois
Eastern Division

JUDGMENT IN A CIVIL CASE

Case Number: 09 C 5891

Steven C. Denk
v.
United States of America, et al.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that this case is dismissed with prejudice.

Michael W. Dobbins, Clerk of Court
/s/ Eric Fulbright, Deputy Clerk

Date: 4/27/2010

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge
Charles R. Norgle

CASE NUMBER 09 C 5891

DATE 4-27-2010

CASE TITLE

Steven C. Denk vs. United States, et al.

DOCKET ENTRY TEXT

Motion by Defendants to dismiss [23] is granted with prejudice. Motion by Plaintiff to compel answer [30] is denied. Motion by Plaintiff to deny motion to dismiss [31] is denied. The clerk shall enter judgment pursuant to FED. R. Civ. P. 58. Civil case terminated.

s/ Charles Norgle

STATEMENT

Before the Court is the government's motion to dismiss Plaintiff Steven C. Denk's ("Denk") complaint, which challenges the government's authority to collect income taxes. Denk filed four documents in response to the government's motion.

He filed what he calls "Sworn Objections" to the government's motion, a "Sworn Motion" to compel the government's answer to his complaint, a "Sworn Motion" to deny the motion to dismiss and a document titled, "Suggestion by Plaintiff Steven C. Denk of indispensable mandate to answer plaintiff's subject matter jurisdiction challenge." [Dkt. 28, 30, 31, 33]. For the following reasons, the government's motion is granted with prejudice and Denk's responsive documents, to the extent they're filed as motions, are denied.

Denk, a pro se, initiated this case on September 22, 2009 against the United States and several IRS employees, alleging claims pursuant to the Fifth and Sixth Amendments and seeking various injunctive and declaratory relief. On March 8, 2010 the government certified that the IRS employees that Denk listed in his complaint were acting within the scope of their employment at the time the underlying events took place. The effect of this certification is significant. The Federal Tort Claims Act ("FTCA") grants federal employees absolute immunity from common-law tort claims that arise out of acts that the federal employee undertakes in the course of his or her official duties. See 28 U.S.C. § 2679(b)(1); Alexander v. Mount Sinai Hosp. Med. Ctr., 484 F.3d 889, 891 (7th Cir. 2007) (citing Osborn v. Haley, 549 U.S. 225 (2007)). Thus, when a federal employee is sued, and the government issues the requisite certification, the employee is dismissed from the action and the United States is substituted as the defendant in place of the employee. 28 U.S.C. § 2679(d)(1). Thus, with respect to Denk's common law tort claims, this case is against the United States alone.

Turning to the government's motion, it first argues that Denk has failed to state a claim under the Sixth Amendment because the IRS never initiated criminal or civil proceedings against him. The IRS simply began an investigation; it did not call Denk to testify, nor did it file any formal charges against him. This realization is critical because the rights that Denk is invoking, which the Sixth Amendment protects, "do[] not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings-whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." McNeil v. Wisconsin, 501 U.S. 171, 175 (1991). Neither the IRS nor any other government actor commenced adversary proceedings against Denk, thus any claim based on the Sixth Amendment fails.

Moreover, in support of his claim pursuant to the Fifth Amendment, Denk alleges that the government refused to answer his questions and denied him the right to discover the materials that the IRS had gathered during its investigation. But this is entirely insufficient to state a claim for a violation of the Fifth Amendment. No court has ever held that an individual that is subject to an IRS investigation has the constitutionally protected right to turn the investigation around and seek discovery from and question the investigators. As such, because Denk did not have a clearly-established constitutional right to the discovery he sought, his claim pursuant to the Fifth Amendment must be dismissed.

Next the government asserts that any remaining claims that are founded on state law or perhaps on a federal statute that does not allow a private right of action against the United States must be dismissed

because they're governed by the FTCA. Again, since the government certified this case, Denk's qualifying claims must proceed against the United States under the FTCA. And, to bring a claim pursuant to the FTCA, a claimant must file an administrative claim before he or she presents those claims to the federal court. McNeil v. United States, 508 U.S. 106, 113 (1993). There is nothing in Denk's complaint to plausibly suggest that he has exhausted his administrative remedies before filing his claims in this Court. Thus any claims pursuant to state common law or federal statutes without a private right of action are dismissed.

Finally the government argues that Denk's claims for declaratory and injunctive relief are barred by the Anti-Injunction Act, acting in conjunction with the Declaratory Judgment Act (the "Acts"). The Acts, in part, bar district courts from exercising jurisdiction over cases that seek declaratory and injunctive relief with respect to taxes. See 26 U.S.C. § 7421(a). The actions they allow are limited to taxpayers seeking refunds. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962). As to tax challenges, however, the Acts' tax exception prevents litigants from challenging their tax assessment without paying it first, Flora v. United States, 362 U.S. 145, 163-64 (1960), which is precisely what Denk has done here. As it turns out, Denk's declaratory and injunctive requests, which seek to restrain the government's collection of his taxes, are barred by the Acts.

Accordingly, the government's motion is granted with prejudice and Denk's responsive filings are denied. IT IS SO ORDERED.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 13, 2011

Before
FRANK H. EASTERBROOK, *Chief Judge*
RICHARD A. POSNER, *Circuit Judge*
DIANE P. WOOD, *Circuit Judge*

No. 10-2563

STEVEN C. DENK,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United
States District Court for the
Northern District of Illinois,
Eastern Division.

No. 09 C 5891
Charles R. Norgle, Judge.

Order

We concluded that Steven Denk's suit and appeal were frivolous. *Denk v. United States*, No. 10-2563 (7th Cir. Dec. 21, 2010) (non-precedential position).

Among other shortcomings, the suit ignored the absence of subject-matter jurisdiction. (A person who wants to contest his taxes may sue in district court only by paying the taxes and seeking a refund.) We directed Denk to show cause why he should not be ordered to pay a fine for frivolous litigation.

Denk's response to this order does not even try to show that there was a plausible basis for subject-matter jurisdiction in the district court. Instead Denk repeats, at length, his assertion that he cannot be treated as a "taxpayer" until officials of the Internal Revenue Service "answer" his assertion that his income is not subject to taxation. This line of argument is unrelated to the reason why Denk lost this suit and is frivolous in his own right. The Internal Revenue Code does not set the stage for a debate between tax collectors and income earners. The Code requires compliance (which means an accurate report of one's income, and payment of the legally required tax), and the disinclination of the IRS to get into extended arguments with tax protesters, one at a time, is entirely understandable.

Denk's suit was frivolous. His appeal was frivolous. And his response to the order to show cause is frivolous. We impose a sanction of $4,000, payable immediately to the Clerk of Court. See *Szopa v. United States*, 460 F.3d 884, 887 (7th Cir. 2006). Failure to pay this sanction will lead to the entry of an order curtailing Denk's ability to file further civil suits in the federal courts. See *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

NOTICE OF ISSUANCE OF MANDATE

February 14, 2011

To: Michael W. Dobbins
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago, IL 60604-0000

No.: 10-2563

STEVEN C. DENK,
Plaintiff - Appellant
v.
DOUGLAS H. SHULMAN, et al.,
Defendants - Appellees

Originating Case Information:
District Court No: 1:09-cv-05891
Northern District of Illinois, Eastern Division
District Judge Charles R. Norgle

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS: No record to be returned.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ORDER

February 23, 2011

BEFORE
FRANK H. EASTERBROOK, Chief Judge
RICHARD A. POSNER, Circuit Judge
DIANE P. WOOD, Circuit Judge

No.: 10-2563

STEVEN C. DENK,
Plaintiff - Appellant
v.
DOUGLAS H. SHULMAN, et al.,
Defendants - Appellees

Originating Case Information:
District Court No: 1:09-cv-05891
Northern District of Illinois, Eastern Division
District Judge Charles R. Norgle

On January 13, 2011, this court sanctioned appellant Steven Denk $4,000 for filing a frivolous appeal and ordered the sanction to be paid immediately to the Clerk of this Court. Denk has failed to pay the sanction.

Unless and until Steven Denk pays all outstanding filing fees and sanctions, the clerks of all federal courts in this circuit are directed to return unfiled any papers submitted either directly or indirectly by him or on his behalf. *See In re: City of Chicago*, 500 F.3d 582, 585-86 7th Cir. 2007; *Support Sys. Int'l v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995) (per curiam). In accordance with our decision in *Mack*, exceptions to this filing bar are made for criminal cases and for applications for writs of habeas corpus. *See Mack*, 45 F.3d at 186-87. This order will be lifted immediately once Steven Denk makes full payment. *See City of Chi.*, 500 F.3d at 585-86.

If Steven Denk, despite his best efforts, is unable to pay in full all outstanding sanctions and filing fees, no earlier than two years from the date of this order, he is authorized to submit to this court a motion to modify or rescind this order. *Id.; Mack*, 45 F.3d at 186.